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Legal Guideposts for Trade Associations

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LEGAL GUIDEPOSTS FOR TRADE ASSOCIATIONS*

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In today's complex business world the average business needs a trade association. Usually the smaller businesses need an association more than the giant corporations, who have their own research staff, their own credit department and cost accounting which shows the exact cost of the smallest article. Various definitions have been given for the modern trade association:

1. Probably one of the shortest and best definitions was advanced by Herbert Hoover. "A trade association is a facility for the promotion and self-regulation of industry and commerce."

2. Justice Louis D. Brandeis of our Supreme Court defined it: "A trade association is an organization for mutual benefit, which substitutes knowledge for ignorance, rumor, guess and suspicion. It tends to substitute research and reasoning for gambling and piracy, without closing the door to adventure or lessening the value of prophetic wisdom."

3. An association for political, commercial, or manufacturing purposes, or even for those for science and literature is a powerful enlightened member of the community, which cannot be disposed of at pleasure or oppressed without remonstrance, and which by defending its own right against the encroachment of the government saves the common liberties of all the country.[1]

Modern trade associations have become such an important unit in our modern day business that almost all public-spirited citizens, whether professional or businessmen, recognize that it must be fostered and protected. Such associations are essentially democratic in their organization — like the U. S. Senate. Small and large companies have equal representation. Knowledge is exchanged. There are neither religious or educational barriers to membership. Usually the sole qualification is engagement in industry of a profession. Probably democracy in its purest sense is found today in trade associations. Contrary to criticism, trade associations generally tend to

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1. II de Tocqueville, Democracy in America, 319.

serve their smaller members to a greater degree than their larger ones.[2]

WE CAN ALL AGREE ON SIX BASIC FUNDAMENTALS:

1. Trade associations are a most constructive force in our modern business and should therefore be preserved.
2. Under ordinary circumstances, advertising, promotion, research, apprentice training, lobbying present no anti-trust problems.
3. When illegal activities are engaged in, as price fixing, allocation of production, division of markets and boycotts, the trade association has lost its usefulness and will eventually be vigorously prosecuted.[3]
4. Trade associations should not be a target for any extra suspicion and should be neither the darlings or the doughboys of either the enforcement agencies or the courts.[4]
5. Members should keep informed of the activities of the trade associations because judicial opinions deny the existence of guilt by being just a member but they do appear to impose on members a burden of keeping informed which may be impossible to discharge.[5]
6. When it is learned or suspected that a trade association attempts either to regulate or control the following it is time to resign:
   (a) *What*[6] or *how much*[7] anyone can manufacture, buy or sell.
   (b) The *prices* at which its members buy or sell.[8]
   (c) *Who shall* manufacture, buy or sell;[9] or
   (d) *Where* anyone shall manufacture, buy or sell.[10]

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2. *Guidepost to a Revised National Anti-Trust Policy*, 50 Mich. L. Rev. 1139, 1172 (1952).

3. Mundt, *The New Look Along the Potomac*, 5 Journal of American Trade Association Executives (April, 1953).

4. Carretta, *Legality of Trade Associations*, Address to the New York Bar Ass'n. (March 25, 1954).

5. Phelps Dodge Refining Co. v. FTC, 139 F.2d 393 (4th Cir. 1943) (The court there held, "[W]e are not prepared to hold that mere membership is enough to show complicity. . . ." but after a member knows or "is *chargeable with* the knowledge that his fellows are acting unlawfully" he may be charged with participation in an illegal conspiracy.) (emphasis supplied). But see FTC v. Cement Institute, 333 U. S. 683 (1948) (The court held membership in the institute justified the commissioner's finding against each member.).

6. Fashion Originators' Guild v. FTC, 312 U. S. 457 (1941); Milk & I. C. C. Institute v. FTC, 152 F.2d 478 (7th Cir. 1946).

7. United States Tobacco Co. v. American Tobacco Co., 163 Fed. 701 (S. D. N. Y. 1908).

8. United States v. Socony-Vacuum Oil Co., 310 U. S. 150 (1940).

9. Eastern States Retail Lumber Dealers Ass'n v. United States, 234 U. S. 600 (1914).

10. Addyston Pipe & Steel Co. v. United States, 175 U. S. 211 (1899).

Our purpose is to help the proper trade association, which is doing much for industry and commerce without running afoul with the law. Fundamentally if the wholesaler, retailer and the consumer deal with each other on an individual basis, each as an absolute free agent, then the greatest economic good for all has been accomplished and the law has not been violated. In 1890 this philosophy of economic "individualism" was first codified in the *Sherman Act.*[11] Basically the Act declares illegal a "combination" or conspiracy in restraint of trade. As trade associations are not an individual but a group working together in a common cause, it is therefore a "combination" and many times a combination of competitors. So if a trade association does anything in restraint of trade such acts are illegal. Fortunately our courts construe this vague phase and enunciate what is and what is not "restraint of trade."

Of course, no member can deny membership especially where membership in a particular association has any business significance.[12] Our Supreme Court held by-laws illegal which effectively prevented newspapers which competed with AP members from joining the Associated Press and held:

> "The Sherman Act was specifically intended to prohibit independent businesses from becoming 'associates' in a common plan which is bound to reduce their competitors' opportunity to buy or sell the things in which the groups compete. Victory of a member of such a combination over its business rivals achieved by such collective means cannot consistently with the Sherman Act or with practical, everyday knowledge be attributed to individual 'enterprise or sagacity'; such hampering of business rivals can only be attributed to that which really makes it possible—the collective power of an individual combination."[13]

As modern business expands, this basic economic philosophy of individualism has been limited, defined or expanded in the Clayton Act,[14] Robinson-Patman Act,[15] Norris-La Guardia Act and Webb-Pomerine Act,[16] Miller-Tydings and McGuire Act and the Federal Trade Commission Act.[17] The two prime anti-trust laws are the Sherman Act and its handmaiden, the Federal Trade Commission

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11. 26 Stat. 209 (1890), 15 U. S. C. §§ 1-7 (1952).
12. American Federation of Tobacco Growers v. Neal, 183 F.2d 869 (4th Cir. 1950); Quality Bakers v. FTC, 114 F.2d 393 (1st Cir. 1940); Robinson-Patman Price Discrimination Act, 49 Stat. 1526 (1936), 15 U. S. C. § 13 (1952).
13. Associated Press v. United States, 326 U. S. 1, (1945).
14. 38 Stat. 730 (1914), 15 U. S. C. § 13(a) (1952) (affects the way a buyer may deal with a seller). See Quality Bakers v. FTC, 114 F.2d 393 (1st Cir. 1940).
15. 49 Stat. 1526 (1936), 15 U. S. C. § 13 (1952) (This act is really an amendment to the Clayton Act.).
16. This act deals with Export Associations and provides for anti-trust exemptions.
17. 38 Stat. 730 (1914), 15 U. S. C. §§ 12-27 (1952).

Act, and they are applied today to prevent group interference with free operation of the marketing or merchandising process.

The Federal Trade Commission Act declares "UNFAIR METHODS OF COMPETITION * * * UNLAWFUL." This presents another indefinite phrase and makes it very difficult to provide businessmen with specific rules of conduct but the Act has provided the courts a catch-all legal prohibition for previously uncatalogued actions by associations, which interfere with the fundamental concept of individualism in modern marketing processes. As the Supreme Court has held that unfair methods of competition although not a precise definition "but the meaning and application of which must be arrived at" by what this Court elsewhere has called "the gradual process of judicial inclusion and exclusion."[18] It would seem the major purpose of this Act is to enable the commission to restrain certain practices as "unfair" which, although not yet a violation of the Sherman Act would most likely do so if left unrestrained. Thus individual conduct or concerted conduct of an association may fall short of being a violation of the Sherman Act but come within the spirit of "unfair method of competition" under the Trade Commission Act and be illegal.[19]

A. *What Activities Are Legal Under the Sherman Act*

(prohibiting a conspiracy or combination IN RESTRAINT OF TRADE) and the *Federal Trade Commission Act* (which declares unlawful, *unfair methods of competition*)?

Many types of activities are relatively safe for a trade association fundamentally because they are not *directly related to* merchandising aspect of business. Some of these have been listed as follows:[20]

1. *Safety and Accident Prevention Programs.* These have proved immensely valuable in industries where the raw materials, manufacturing process, or machinery used are inherently dangerous. Joint industry collection and dissemination of accident causes and industry-wide prizes and awards to plants or companies with improved safety records have been proven far more effective than individual company efforts.

2. *Health Program.* In industries which deal with new materials inherently dangerous to health, association sponsored research as

18. FTC v. Keppel & Bros., 291 U. S. 683 (1934).
19. FTC v. Cement Institute, 333 U. S. 683 (1948).
20. Ruddock, *The Organization and Activities of Trade Associations*, A. T. A. Journal 46 (July, 1955).

to causes and cures have proved very effective. In dealing with Workmen's Compensation authorities, the report on disease-causing potential of a substance by an industry-wide trade association carries far more weight than any individual company report.

3. *Product Publicity.* An association can finance an excellent publicity program for the basic products of the industry without undue expense to any one company. Furthermore, because the publicity emenates from an industry-wide association, it commands a far greater acceptance by editors than would any individual company's publicity release. An association publicity program has proved very valuable (a) in overcoming historical public resistance to a type of product; (b) in introducing a new product which performs a function similar to an older product and thus must struggle for public acceptance; (c) in extolling some fundamental characteristics of the basic products of an industry which make them preferable to the products of a different industry which are sold to perform the same function; and (d) in combatting an adverse development which has imperiled the public's previous acceptance of the product.

4. *Research.* An association research program, financed by the contributions of all members, can accomplish much that would only be attempted by the largest companies alone. It can serve to develop new products and new uses for existing products, to investigate cause of product defects and improve the product, to develop better production methods, and to discover commercial uses for waste or by-products.

5. *Cooperation With Government Agencies.* Trade associations have proved invaluable to government departments and agencies in peace time and war time. In peace time the collection of industry statistics for the Department of Commerce, the working out of product specifications with all government purchasing agencies and the development of specification standards with the Bureau of Standards have proved of great assistance to the efficient operation of government. In most cases it would be a practical impossibility for the government agency concerned to work with each company individually. In tariff matters, I. C. C. freight rate hearings, and the Federal Trade Commission trade practice conferences, a responsible industry trade association is almost a necessity if a comprehensive picture of the effect of proposed official action on an industry is to be measured accurately. In war time the government agencies administering manpower, raw material and price controls

found trade associations valuable in supplying background facts and quickly assembling a cross-section of industry leaders. Unfortunately here, however, the latent suspicion of trade associations led to the utterly unnecessary barring of trade association executives from participation in the work of Industry Advisory Committees. However, trade association actions in co-operation with government agencies are almost always legally safe. One notable exception to the generality of this statement is the attitude of the courts to the manner in which railroads have combined in proposing freight rates to the Inter-state Commerce Commission."[21]

6. *Assemblying General Information.* For example, the U. S. Chamber of Commerce just released a report[22] which showed *fringe benefits* paid by one thousand selected American companies averaged $810.00 per employes in 1955. Such benefits, including pensions, insurance, vacations, holidays and payments required by law have increased an average of $100.00 since 1953. We see that "weekly wage and hourly rates are no longer accurate measures of either workers income or the labor costs of doing business." There are many other legitimate services rendered by trade associations which are too numerous and too well known to mention here.

7. *Public Relations and Legislative Activities.* Trade associations habitually represent the industry in public relations programs, institutional advertising, etc. Certainly your association is not likely to run afoul of the anti-trust laws in programs designed to foster good will, introduce new industry products and uses; solicit and hold customers and to support and defend the industry.

Another one of the most common products of association activities is the inevitable resolution favoring or condemning pending or proposed legislation. Executives should remember, however,

(a) That corporate members are prohibited under state and federal laws from contributing to specified political activities.

(b) Corporate contributions for the promotion or defeat of legislation are not deductible as a general business expense.[23]

(c) If your trade association charter purposes and specific activities fall within the Federal Regulation of Lobbying Act, strict compliance must be maintained.

8. *Defense of Law Suits Against Any Member of Industry.*

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21. Georgia v. Pennsylvania Ry., 324 U. S. 439 (1945); United States v. Association of American Railroads, 4 F. R. D. 510 (1945).

22. *Fringe Benefits of 1955,* prepared by Dr. Emerson P. Schmidt, Director of Economic Research, United States Chamber of Commerce.

23. Internal Revenue v. Textile Mills Security Corp., 117 F.2d 62 (3rd Cir. 1940).

Where a law suit effects the entire industry, many trade associations have raised a common defense fund and employed one set of counsel who specialize in this type of litigation. This is in addition to insurance carried for the general protection of all members of the industry. Several years ago there were many cases against the cement companies for silicosis symptoms and diseases of the respiratory system. Today the tobacco industries have employed a New York firm to supervise and handle all litigation against any member of their association where it is alleged smoking caused cancer."[24]

B. *What Activities Are Illegal for Trade Associations?*

Under the concept of restraint of trade and unfair methods of competition, a trade association cannot legally:

(1) *Set minimum prices, establish prices, fix price differential or enforce maintenance of resale prices.*

As early as 1927 Justice Stone said: "The aim and result of every price fixing agreement, if effective, is the elimination of one form of competition. The power to fix prices, whether reasonably exercised or not, involves power to control the market and to fix arbitrary and unreasonable prices."[25] Thus, a price arbitrarily fixed today as reasonable may be very unreasonable tomorrow because of economic or business conditions. "Any combination which tampers with price structure is engaged in an unlawful activity; under the Sherman Act a combination formed for the purpose and with the effect of raising, depressing, fixing, pegging, or stabilizing the price of a commodity in interstate or foreign commerce is illegal per se."[26]

Agreements either expressed or implied and trade associations activities that have any "manipulation" of price as their goal should never be undertaken on the theory that they do not constitute price fixing or in the belief that an anti-trust violation will be excused because the association represents but a small part of the industry or that its members cannot effectively control prices in their market.

(2) *Allocate the market, either geographically or by classes of customers.*

Not only is price fixing declared to be illegal per se but the allocating of the market either geographically or by classes of customers has been held to be illegal and an unlawful combination.[27] The anti-trust statutes themselves are expressed in very general and

24. Cooper v. R. J. Reynolds Tobacco Co., 234 F.2d 170 (1st Cir. 1956).
25. United States v. Trenton Potteries, 273 U. S. 392 (1927).
26. United States v. Socony-Vacuum Oil Co., 310 U. S. 150 (1940).
27. Addyston Pipe & Steel Co. v. United States, 175 U. S. 211 (1899).

indefinite terms and this prohibition was probably motivated in part, at least, by a desire on the part of government officials to shape the business economy according to their own ideas.

(3) *Limit the supply of product reaching the market.*

This practice is inherently anti-competitive and should be avoided entirely, whether it is a per se offense is debatable but certainly the practice has been condemned and declared to be illegal.[28]

(4) *Boycotts, blacklists, prevent any buyer or class of buyers from having access to all the present or potential products of the industry.*

In 1914 in the first major trade association case[29] a boycott was challenged directly, that is apart from allegations of price fixing and other illegal activities. Some wholesale lumber dealers were selling direct to consumers. So the retailers got together, compiled and circulated names of all offending wholesalers, although there was no agreement that those wholesalers whose names appeared on the list should be boycotted, but the court said: ". . . the circulation of such information among the hundreds of retailers had and was intended to have the mutual effect of causing such retailers to withhold their patronage from the concerns listed. A retail dealer has the unquestioned right to stop dealing with a wholesaler for reasons sufficient to himself and may so do because he thinks such dealer is acting unfairly in trying to undermine his trade . . . But when a retailer goes beyond his personal right and conspiring and combining with others of like purpose, seeks to obtain the free course of interstate trade and commerce and to unduly suppress competition by placing obnoxious wholesale dealers under coercive influence of a condemnatory report, he exceeds his lawful rights." Where group action coercing outside parties is deemed an undue restraint of trade, whatever its purpose is likely to fall and be held illegal per se whenever used:

(a) in attempt to control distribution as in the lumber case;[30]

(b) to rid a trade of price-cutters;[31]

(c) to discourage the development of new social institutions.[32]

Whatever the ills a trade association and its members face, they

28. United States Tobacco Co. v. American Tobacco Co., 163 Fed. 701 (S. D. N. Y. 1908).

29. Eastern States Retail Lumber Dealers Ass'n v. United States, 234 U. S. 600 (1914).

30. The second great case on this point was Fashion Originators Guild v. FTC, 312 U. S. 457 (1941) (style piracy case involving the boycott of those who violated the established ethical customs of the industry).

31. United States v. Frankfort Dist., 324 U. S. 293 (1945).

32. Amercian Medical Ass'n v. United States, 317 U. S. 519 (1942).

must be guided by the law. Neither existence abuse nor shady practices and the threat of severe economic displacement justifies remedies and practices that transgress the law.

These all are final legal conclusions drawn from a pattern of activities and effects.

C. *Which Activities May or May Not Be Legally Pursued?*

There are certain fringe areas of activities of trade associations which have been condemned largely because they were a part of the general pattern of activities, which were said to be a conspiracy in a given case.

(1) *Product Standardization.* Where the Court found the standardization had been deliberately adopted and zealously carried on to eliminate the only factors except price on which industry members might compete and where practices were adopted to have uniform prices, the Court held in two leading cases in 1946[33] and 1949[34] that these practices should be condemned.

However, in the same year 1949[35] the court stated that if the activities of the association were otherwise legal standardization alone would hardly infect it with illegality." The Court also found that the multifarious sizes and shapes of tags had made some standardization necessary and that there was a long history behind the development of standard item price lists. "Standardization has been an essential prerequisite to mass production and competition, which has made America industrially great; yet, this is an activity which could produce or tend to foster restrictions in trade and commerce."[36]

(2) *Collection and Distribution of Freight Rates.* Collection and distribution of freight rates was found to be legal in 1925 for the cement industry[37] but in 1948[38] although the Court stated the supplying of freight rate data "would be harmless in itself", it nevertheless proceeded to hold for the same industry it was an element utilized with others in attaining a uniform price structure by concerted action and the Supreme Court upheld an enjoining action.

A later case[39] followed the lead and condemned a system em-

33. Bond Crown & C. Co. v. FTC, 176 F.2d 974 (4th Cir. 1949).
34. Milk & I. C. C. Institute v. FTC, 152 F.2d 478 (7th Cir. 1946).
35. Tag Mfg. Institute v. FTC, 174 F.2d 452 (1st Cir. 1949).
36. Paramount Famous Lasky Corp. v. United States, 282 U. S. 30, 36 (1930); United States v. Dried Fruit Ass'n, 4 F. R. D. 1 (1944).
37. Cement Mfg. Protective Ass'n v. United States, 268 U. S. 588 (1925).
38. FTC v. Cement Institute, 333 U. S. 683 (1948).
39. Triangle Conduit & C. Co. v. FTC, 168 F.2d 175 (7th Cir. 1948), *aff'd by a divided court in* 336 U. S. 956. See also Eastern States Lumber Dealers Ass'n v. United States, 234 U. S. 600 (1914).

ployed by an association by having freight rates compilations made and distributed by an individual employed for the purpose, and stated: "These compilations became important adjuncts to petitioners' plans and methods in matching delivered price quotations. They were intended by petitioners to be used as their common price factors. We think there was direct proof of the conspiracy, but whether there was or was not, in determining if such findings are supported, it is not necessary that there be direct proof of an agreement. Such an agreement may be shown by circumstantial evidence."

However, efforts to carry this use of circumstantial evidence to the point of requiring proof merely of consciously parallel action by different companies was rebuffed in the lastest reported case[40] in which Justice Clark stated in his able opinion: "The crucial question is whether respondent's conduct toward petitioner stemmed from independent decision or from an agreement, tacit or express. To be sure business behavior is admissible circumstantial evidence from which the fact finder may infer agreement. But this Court has never held that proof of parallel business behavior conclusively establishes agreement, or phrased differently, that such behavior itself constitutes a Sherman Act offense. Circumstantial evidence of consciously parallel behavior may have made heavy inroads into the traditional judicial attitude toward conspiracy; but 'conscious parallelism' has not yet read conspiracy out of the Sherman Act entirely."

(3) *Filing and Distribution of Cost and Price Statistics.* In the earlier cases of filing and distribution of facts and statistics on costs, prices, production, customers and other intimate business details are, admittedly a highly hazardous activity for an association of competitors to carry on and was condemned.[41] However, the practice was held legal in cases later in date[42] but in each of these cases the information collected was distributed and made available to all interested channels of trade. Certain safeguarding principles have emerged in connection with this statistical activity. For example, if the price statistics collected and distributed are historical rather

40. Theatre Enterprises, Inc. v. Paramount Film Distributing Corp., 346 U. S. 537 (1954).

41. American Column & L. Co. v. United States, 257 U. S. 377 (1921); Hartford-Empire Co. v. United States, 323 U. S. 386 (1954); United States v. Amercian Linseed Oil Co., 262 U. S. 371 (1923); United States v. Trenton Potteries Co., 273 U. S. 392 (1927); Eastern States Lumber Dealers Ass'n v. United States, 234 U. S. 600 (1914).

42. Maple Flooring Manufactuers Ass'n v. United States, 268 U. S. 563 (1925); Cement Mfg. Protective Ass'n v. United States, 268 U. S. 588 (1925); Tag Mfg. Institute v. FTC, 174 F.2d 452 (1st Cir. 1949).

than current, no real danger is involved. The line of demarcation is whether they are old enough so that they can have no direct effect on the establishment of current or future prices. If the price list is a month or two old before being published for the trade association membership — such price statistics publication would be safe. In a late case[43] it has been indicated that rather current price information may be collected and distributed provided that it coincides with the historical practice in the industry and that the statistics are published to all interested classes of trade.

The ultimate use of this price statistical information is most important. If it is used merely to give an informed background as to the business condition of the industry in order to enable members individually to make more intelligent independent business decisions, there can be no logical objection to such activity. The Supreme Court ably said: "Free competition means a free and open market among both buyers and sellers for the sale and distribution of commodities. Competition does not become less free merely because the conduct of commercial operations become more intelligent through the free distribution of knowledge of all the essential factors entering into the commercial transaction. General knowledge that there is an accumulation of surplus of any market commodity would undoubtedly tend to diminish production, but the dissimination of that information cannot in itself be said to be restraint upon commerce in any legal sense. It was not the purpose or intent of the Sherman Anti-Trust Law to inhibit the intelligent conduct of business operations, nor do we conceive that its purpose was to support such influences as might affect the operations of interstate commerce through the application to them of the individual intelligence of those engaged in commerce, enlightened by accurate information as to the essential elements of the economics of a trade or business, however gathered or disseminated."[44]

(4) *Multiple Activities Create a Hazard.* We see that products, standardization, collection and distribution of freight rates and the filing and distribution of cost and price statistics may be condemned as activities of trade associations. There are many lesser activities, too numerous to mention here, which may be very hazardous. Therefore, every activity must be watched which might affect the marketing process. The reason is because the end result may be illegal because of a combination of activities, none of which are illegal standing alone.

43. Sugar Institute v. United States, 297 U. S. 553 (1936).
44. Maple Flooring Manufacturers Ass'n v. United States, 268 U. S. 563 (1925).

The Court has ably pointed this out in an opinion, where it was held: "Innocent explanations are offered as to each of the circumstances relied on by the commission, and if it were permissible to consider each of the circumstances out of connection with the others, there would be much force in the argument of the petitioners. Where all of the circumstances are considered together as they must be, however, there can be no question as to their sufficiency, to support the findings and conclusions of the commission. The standardization of product, for example, would be innocent enough by itself, but not when taken in connection with standardization of discounts and differentials, publication of prices with agreements not to charge less than a minimum under patent license agreements affecting practically the entire industry, the freight equalization which we have described and such uniformity of prices throughout the industry as to leave no price competition of any sort anywhere. The practice of freight equalization might be all right if used by the manufacturer, individually, but not when used in connection with standardization of product, patent control, price publication and uniformity of discounts and trade practices in such a way as to destroy price competition."[45]

Thus, we see that too many different innocent activities may be combined to produce an end result that is illegal.

In some cases[46] an activity as collective merchandising of competitors' product, which normally would be illegal, must be undertaken in order to save an industry. If the court is fully informed and wise in the scope of its concept, legal clearance will often follow.

IV. CONCLUSION

After your trade association has been incorporated, for the protection of individual members, you should be cautious in the field of marketing products.

Fundamentally a trade association is an artificial creature, necessarily alien in its composition in the basically individualistic philosophy of our anti-trust laws. Individuality should not be stifled but encouraged so as to avoid "legal implications of standardization."[47]

Any attempt to list all activities as either proper or improper would be both improper and unrealistic. The entire pattern of all

45. Bond Crown & C. Co. v. FTC, 176 F.2d 974 (4th Cir. 1949).
46. Appalachian Coals, Inc. v. United States, 288 U. S. 344 (1933).
47. *Legal Implications of Standardization*, American Standard Ass'n, Sixth National Conference on Standards, (Oct., 1955) (A fine discussion of the terminology of standardization including: quality, safety, patents, interchangeability, reduce variety, and procedures for standardization.).

activities of the trade association as woven into the existing economic situation in the industry must be weighed and closely examined before any single activity, however innocent individually, can be approved as safe and legal for your trade association.[48]

Certainly bureaucratic action which transgresses statutory authority must be constantly watched and there is no better lookout than our trade associations. The vast majority of American trade associations operate in a perfectly legal manner and perform valuable, indispensable services for their members. The exceptions have been cited to give a guidepost or warning of the activity zone, which has been declared illegal. In 1955 out of 49 anti-trust cases brought by the Federal Trade Commission only 8 involved trade associations. Also last year of the 103 cases[49] prosecuted by the Justice Department's Anti-Trust Division only 19 involved trade associations, of which 10 were criminal cases.

The trend is to encourage trade associations and not to stifle them.[50] Modern industry and commerce increases public interest in our trade associations.[51] The Attorney General's Conference is a progressive approach to the problem.[52] There has been much helpful information published in trade association journals and there are two outstanding volumes[53] available for reference. For the average trade association, the laws are favorable and their course can be pursued without too much apprehension of possible illegal infringements.

Usually trade association statements regarding credits and overdue accounts are privileged if four basic requirements are met:[54]

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48. Lamb and Kittrelle, *Trade Association Law and Practice*, (1956). See also *Association Activities and the Law*, United States Chamber of Commerce publication.

49. Many cases were against corporations directly. See United States v. E. I. Du Pont D. N. & Co., 351 U. S. 377 (1956) (his manufacturer sold 75% of all cellophane sold in the United States; but cellophane constituted less than 20% of all flexible packaging materials sold in the period indicated. The Supreme Court took note of the combine; but held ". . .[W]here there are marked alternatives that buyers may readily use for their purposes, illegal monopoly does not exist merely because the product said to be monopolized differs from others." The Court analyzed the principal uses of cellophane and compared the extent of its use on particular products with the extent of use of alternate wrapping materials and this convinced the Court that cellophane for the purpose of the Sherman Act should not be isolated from the other packaging materials).

50. See 62 Harv. L. Rev. 1369 (1949).

51. See Fowler, *Legal Activities of Trade Associations*, United States Chamber of Commerce publication.

52. Address of Attorney General Herbert S. Brownell, Jr., Trade Ass'n Sect., United States Chamber of Commerce meeting, May 3, 1955. See Attorney General's Committee Report and Conference on Anti-Trust Laws, Federal Legal Publications (New York).

53. See *Association Activities and the Law*, United States Chamber of Commerce publication; Van Cise and Dunn, *How to Comply with the Anti-Trust Laws*, CCH (Spec. Rep.). See generally monthly Anti-Trust Bulletin and Newsletter, Federal Legal Publication (New York).

1. Statement must be made to further legitimate interest of the creditor;[55]
2. It must not be made with malice;[56]
3. Or with the intention of injuring the debtor;[57]
4. Or of forcing payment by coercive means.[58]

There is no basic inconsistency between the ideal of competition embodied in the anti-trust laws and the kind of cooperation among businessmen that is made possible by the trade associations. For members and officers the fundamental rule to be followed in keeping an association's operations within the anti-trust laws is that there be no agreement either expressed or implied, which restrict the individual's freedom to make independent business decisions.

54. See Washington Times Co. v. Bonner, 86 F.2d 836 (D. C. Cir. 1936).
55. Bradstreet Co. v. Gill, 72 Tex. 115, 9 S.W. 753 (1888).
56. Locke v. Bradstreet Co., 22 Fed. 771 (D. C. Minn. 1885).
57. Mower-Hobart Co. v. Dun & Co., 131 Fed. 812 (N. D. Ga. 1904).
58. Ideal Motor Co. v. Warfield, 211 Ky. 576, 277 S.W. 862 (1925).

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